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COMMITTEE ON ECONOMIC, SOCIAL AND CULTURAL RIGHTS

Fifth session

SUMMARY RECORD OF THE 46th MEETING IN 1990

Held at the Palais des Nations, Geneva,
on Monday, 10 December 1990, at 3 p.m.

Chairman: Mr. KOUZNETSOV

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The meeting was called to order at 3.45 p.m.

CONSIDERATION OF REPORTS (agenda item 7)

(a) REPORTS SUBMITTED BY STATES PARTIES IN ACCORDANCE WITH ARTICLES 16 AND 17 OF THE COVENANT (continued)

Additional information submitted by States parties to the Covenant following the consideration of their reports by the Committee

1. The CHAIRMAN invited the Committee to consider the recommendations of the pre-sessional working group and asked whether one of the members of the group would introduce the conclusions it had reached.

2. Mr. TEXIER, summarizing the working group's conclusions, said that four supplementary reports - by Zaire, France, the Netherlands and Colombia - had been submitted to the Committee and that it would most probably be receiving others, since at the current session it had made several requests for additional information.

3. The first question was when to consider the additional information. It seemed that the Human Rights Committee considered a State party's supplementary report when it examined the State's following periodic report, which delayed the discussion for four or five years. The working group found it preferable to examine the information as rapidly as possible, namely at the session after it was received.

4. The second question was how the additional information should be considered. First of all, all the members of the Committee should read the supplementary report submitted by a State in order to be able to discuss it. Moreover, an initial speaker should be assigned to present the concluding observations on the document in question. That would provide an opportunity to indicate to the State concerned that the Committee would continue to monitor the implementation of the Covenant and to ask it to be especially attentive to a particular question raised in its report.

5. Mr. MRATCHKOV explained that the reason why the working group had found it preferable to consider additional information as soon as it was received by the Secretariat and distributed to the members was because the Committee asked for the information, sometimes insistently, and it would therefore not be correct towards the Government that had sent it to postpone consideration. Regarding the consideration procedure, the working group had set the following three objectives: to determine whether the additional information answered the questions raised by the pre-sessional working group and the members of the Committee; to evaluate the information supplied; and to ask the Government, where appropriate, to follow developments regarding the points raised in the supplementary report closely and reflect them in its following periodic report.

6. Mr. MUTERAHEJURU said that, following the consideration of a supplementary report, the Committee might conclude either that the report was satisfactory, and so inform the State in question, or that it was not

satisfactory and ask the State in question to provide additional information in its next periodic report. Regarding the supplementary reports already before the Committee, the working group proposed to appoint immediately the speakers who would introduce the concluding observations so that the Committee might express its views on those reports during the current session.

7. Mr. MARCHAN ROMERO said he fully approved of the procedure for considering reports proposed by the working group, especially with regard to appointing a speaker responsible for making an initial assessment of the supplementary reports. He proposed that the same person who presented the concluding observations on a State party's report should be in charge of assessing additional information supplied by the State in question, for that person, having a better knowledge of the report submitted, would be the most competent. That would also make for continuity in the dialogue with the State in question.

8. Mrs. JIMENEZ BUTRAGUEÑO supported Mr. Marchan Romero's proposal. The knowledge acquired by the person who had studied a State's report the most closely should be put to advantage; that same person should therefore monitor developments in the implementation of the provisions of the Covenant by that State.

9. Mr. MRATCHKOV proposed that a chapter of the Committee's report should be devoted to the consideration of additional information. The Committee should also decide immediately whether it was going to consider the supplementary reports before it at the current session and set aside time for doing so. The working group had estimated that 30 to 45 minutes would be needed for the consideration of each supplementary report.

10. The CHAIRMAN congratulated the pre-sessional working group on the quality of its work and suggested that Mr. Texier should provide a written summary of the group's conclusions and the experts' positions, making it quite clear that the Committee approved those proposals, so that the Rapporteur might include them in the chapter of the report which concerned the Committee's working methods. In that way, all Governments and all interested parties would be informed as to how the Committee would consider additional information. If there was no objection, he would take it that the suggestion was adopted.

11. It was so decided.

12. Mr. MUTERAHEJURU said that he hoped the Committee would be able to discuss the four reports submitted to it and asked whether the four speakers responsible for making an initial assessment of the reports had already been appointed.

13. The CHAIRMAN replied that no speakers had been appointed for the time being and noted that, in accordance with the decision that had just been taken, the additional information supplied by Zaire, the Netherlands, France and Colombia would be considered by the Committee member who had formulated the concluding observations on those countries' reports.

14. Mr. ALVAREZ VITA said he would like to know whether that meant that the members of the Committee would not be able to consider the supplementary reports. If they would not, he would like to know when those reports would be considered.

15. The CHAIRMAN explained that, at the present stage, it was not a matter of considering the four reports that had been submitted but of finalizing the procedure for considering additional information. In accordance with the decision just taken, the Committee would place the consideration of those reports on the agenda of its sixth session. The persons in charge of evaluating the additional information would be the ones who had presented the concluding observations on the reports of the four countries in question. The Committee would devote a maximum of 45 minutes to considering the additional information.

16. Mr. TEXIER endorsed the previous remarks and pointed out that the Committee would not have had the time to consider the four supplementary reports at its current session. However, one question remained, namely whether the State party should be invited to be present during the consideration of its supplementary report, in order to pursue the dialogue, or whether the experts would study the information and then communicate their conclusions to the State party.

17. Mr. MARCHAN ROMERO said that Mr. Texier had raised an interesting question that required some thought. The question was what approach should be taken for considering the additional information received, in particular if it did not satisfy the Committee. What would happen then? Would the dialogue with the State party be interrupted or should the State party be invited to participate in the Committee's discussions? In the latter case, if the Committee raised other questions, there was a risk of creating a vicious circle and embarking upon a never-ending discussion. On the other hand, if the Committee's aim was to foster dialogue, then it naturally needed an interlocutor. The Committee should ponder all those questions immediately in order to define its working methods precisely and in advance. He would have liked to propose solutions, but could do no more than express his concerns.

18. Mr. ALVAREZ VITA said that it would be appropriate to invite the State party to be present when the Committee considered its additional information and give it the opportunity to reply to any questions or comments, but only where that was essential. On the other hand, if the Committee reached the conclusion that the additional information provided allayed all its fears, it would be sufficient to send the State party a note of thanks informing it that its reply was satisfactory. Only if obscure points or grounds for concern remained should the State party be invited to address the Committee.

19. Mr. FOFANA said he believed that the Committee should be flexible and combine the two approaches. In some cases a representative of the State party in question might already be present at the Committee session during which the additional information was examined. In such cases, following its discussions, the Committee might invite the representative to hear its concluding observations on the additional information. Alternatively, the Committee might limit itself to informing the State party of its conclusions in writing.

20. The CHAIRMAN, speaking as a member of the Committee, said he agreed with all the previous speakers that, ideally, a representative of the State party should be present when additional information was considered, since the Committee's objective was to hold an ongoing dialogue with the Government concerned. Thus, the Committee might send the State party a note offering the State the possibility of sending a representative to be present when its additional information was considered. However, if the State party was unable or unwilling to send a representative, he agreed with Mr. Fofana that the additional information should be considered in its absence and the necessary conclusions drawn. Nevertheless, such consideration should not - in cases where the information supplied was deemed to be unsatisfactory - lead to a new request for additional information. That would set off a chain reaction and, as Mr. Marchan Romero had said, the Committee would be embarking upon a never-ending discussion.

21. Mr. WIMER ZAMBRANO said that the Chairman's summing up of the discussion was very accurate, but one thing had been missed out. Mr. Alvarez Vita had proposed that, on the basis of an initial consideration of the additional information sent to it, the Committee should determine whether or not the State party should be invited to be present at its discussions. Naturally, when the State party received such an invitation, it was free to accept or refuse it. Whether a chain reaction took place depended on whether or not the Committee decided that the State party should be represented during the consideration of the additional information.

22. Mr. MRATCHKOV said that the discussion was focusing on two issues. Firstly, all the members of the Committee agreed on the need to inform the State party that the additional information it had supplied would be considered at a particular Committee session. Secondly, a flexible and courteous formula should be found that would enable the State party to send or not to send a representative when the additional information was considered. It was understood that the Committee's conclusions would be reflected in its report, where it would be indicated, if necessary, that the Government in question was requested to supply further information on a particular question in its following report, i.e. in five years' time at the latest. Thus a five-year cycle could be established, giving the Committee the possibility of re-examining, when it considered the State party's following report, questions to which it had given particularly close attention during the consideration of the periodic report itself or of the additional information.

23. The CHAIRMAN, summing up the discussion, said that the State party would naturally be invited to attend the Committee's discussions and that it might choose to send a representative or not, but that its decision would not prevent the Committee from considering the additional information. The information would be considered in one go and should not give rise to a new request for additional information. The results of the Committee's discussions would be set out in a special chapter of its report. Thus, the State party would be informed of the conclusions reached after consideration of the additional information it had supplied, and, through the report, the Committee would let the State know that it was determined to continue the dialogue with it. In his view, if the Committee accepted that procedure, the consideration of additional information should go smoothly.

24. Noting that Mr. Texier and the other members of the pre-sessional working group would be preparing a summary of the discussion that had just taken place for inclusion in the draft report on the fifth session, he said that if he heard no other proposals he would take it that the Committee had completed its consideration of the question of the procedure for considering additional information.

25. It was so decided.

ORGANIZATION OF WORK (agenda item 4) (continued)

Draft general comment on the nature of States parties' obligations (article 2, para. 1)

26. Mr. ALSTON, introducing the draft general comment he had prepared, said that article 2 of the Covenant addressed two important questions. The first, dealt with in the draft general comment under review, concerned the nature of States parties' obligations (article 2, para. 1). The second related to the guarantee that the rights set forth in the Covenant would be exercised without discrimination, an aspect referred to in article 2, paragraphs 2 and 3 and article 3 of the Covenant. He informed members that by the end of the week he would be submitting, as a companion draft, another draft general comment on article 2, which would deal with the question of non-discrimination. However, since it would be too late to adopt it at the fifth session of the Committee, the other draft would be referred to the pre-sessional working group for the sixth session.

27. It seemed especially important to concentrate on article 2, paragraph 1, because the next stage in the Committee's work was the adoption of general comments on particular rights set forth in the Covenant, especially the right to food, the right to housing and, ultimately, other rights. It was therefore felt that, before preparing those comments on specific rights, it would be appropriate for the Committee clearly to define how it conceived the basic obligations imposed on States parties by the Covenant. If it did not, the same problems might arise whenever the Committee formulated general comments on specific rights.

28. It was also important to define clearly and precisely the nature of States parties' obligations, in view of the imminent adoption of draft general guidelines. Such a definition might serve as a basis for the general guidelines and help explain the content of the guidelines in question to the States parties.

29. After thanking the experts who had agreed to examine, before the current meeting, the text of the draft general comment in a language other than their own, he said he was prepared to take into account any suggestions and proposals for amendments and to incorporate them into his text.

30. The CHAIRMAN said that in his view it was important, on Human Rights Day, to emphasize an important aspect of the Committee's work. While the Committee did useful work by considering periodic reports and drawing conclusions from its consideration that should enable the States parties better to fulfil their obligations, there was another vital aspect of its work, which consisted of helping people to understand the various elements of the Covenant and

attempting to interpret the provisions that might be open to differing interpretations. That was why the opinion of the members of the Committee on the nature of the obligations set forth in the Covenant was of the utmost importance.

31. Mrs. JIMENEZ BUTRAGUEÑO noted that she had only just received the Spanish version of the draft general comment. Since it was necessary to understand the text fully in order to discuss it, she requested that the meeting should be suspended to enable the Spanish-speaking members to read the text.

32. At the request of Mrs. JIMENEZ BUTRAGUEÑO, supported by Mr. ALSTON, the CHAIRMAN suggested that the meeting should be suspended in order to give all the members of the Committee the opportunity to read the text of the draft general comment thoroughly.

The meeting was suspended at 4.35 p.m. and resumed at 4.55 p.m.

33. Mr. MARCHAN ROMERO said that, while the consideration of States parties' reports was important, the most interesting aspect of the Committee's activities was a creative one, that of formulating principles and a basic doctrine for guiding the implementation of economic, social and cultural rights. For that reason, the document submitted by Mr. Alston, which was innovative and thought-provoking, was particularly worthy of interest.

34. The text of the draft general comment contained a particularly interesting idea, namely that States should mention in their periodic reports which, in their opinion, were the rights that could be invoked in the courts under their national judicial system. That idea was all the more pertinent in the light of the possibility, already discussed in the Committee, of adopting an optional protocol to the International Covenant on Economic, Social and Cultural Rights in the not too distant future. In that connection, he noted that during the first week of its session, the Committee had received, an important document from the Inter-American Juridical Committee which spoke of the existence in international law of rights in respect of which a legal remedy unquestionably existed, and the Committee might use that document for preparing an optional protocol.

35. He drew attention to the first sentence of the first paragraph on page 4 of the draft general comment, which read: "The Committee notes that the undertaking 'to take steps ... by all appropriate means' neither requires nor precludes any particular form of government or economic system being used as the vehicle for the steps in question ...". The wording of that sentence seemed rather vague since it implied that the end justified the means, and a State might conclude that it was entitled to apply any system whatsoever as long as it respected the rights set forth in the Covenant. However, it was common knowledge that one of the most important principles for the implementation of the International Covenant on Civil and Political Rights, as also for the implementation of the International Covenant on Economic, Social and Cultural Rights, was the principle of democracy. Thus, he would like a reference to that principle to be included in the sentence in question, perhaps through the addition of the words "based on a democratic system" after the words "economic system".

36. Furthermore, he believed it was important to mention, as did the draft general comment (first paragraph on page 6) that "even where the available resources are demonstrably inadequate, the obligation remains for a State party to strive to ensure the widest possible enjoyment of [economic, social and cultural] rights". Experience had shown that too great an insistence on the difficulties encountered by States parties, in particular third world States, in implementing economic, social and cultural rights, might be used by certain States as an excuse to avoid fulfilling their obligations under the Covenant. In that connection, he noted that it was not the Committee's function to judge the quality of reports or the accuracy of the explanations and justifications provided but to determine whether States parties were effectively fulfilling their obligations. That was why the main emphasis should be placed on respect for the rights set forth in the Covenant.

37. Mr. MRATCHKOV said that Mr. Alston had made a very sensible legal analysis in his draft general comment. In his own view, however, the idea of the progressive realization of the rights se forth in the Covenant should be qualified further, by stating (p. 4, second paragraph) that that progressiveness derived from the very nature - i.e. the evolutive nature - of the rights in question, but also from the fact that economic, social and cultural rights were dependent on economic development, which was necessarily gradual. That paragraph should also stress that States parties' inability to implement those rights immediately did not release them from their obligation to ensure the satisfaction of, at the very least, minimum essential levels of each of the rights set forth in the Covenant. The useful concept of minimum essential level had already been used by the Committee in its previous reports and should be mentioned in the general comment on article 2 of the Covenant.

38. It would also be useful to make a more explicit reference, in the last paragraph on page 6, to the Committee's general comment No. 2, on international technical assistance measures, both out of concern for establishing a certain continuity in the Committee's approach and to emphasize its previously-expressed point of view on one of the aspects of the implementation of article 2.

39. Finally, he believed it would be appropriate to emphasize, at the end of the general comment on article 2, the close connection between economic, social and cultural rights and the efforts made by States parties to ensure their realization, on the one hand, and the right to development as a fundamental human right, on the other, in order to place economic, social and cultural rights in their proper context with respect to the other human rights, the former representing the core of the right to development, which had been enshrined in a General Assembly declaration.

40. Mr. ALSTON said that the paragraphs of his draft should be numbered 1 to 15 and asked the experts to be as precise as possible in proposing amendments to the text.

41. Ms. TAYA stressed the value of the general comments, in which the Committee reflected on the basic principles of implementation of the Covenant and, hence, the principles for its analysis of the situation in the different States parties through periodic reports. She would like to suggest to the members of the Committee a few ideas to add to the general comment on article 2 of the Covenant. Generally speaking, article 2 prescribed the fundamental principle which underlay all the other articles of the Covenant,

whether they dealt with economic, social and cultural rights themselves, international co-operation, the reporting obligations of States or the Committee's normative activity. Article 2 must therefore be understood in its harmonious connection with the other articles.

42. "Full" realization of the economic, social and cultural rights recognized in the Covenant did not mean equalling out for all persons in the areas concerned but the fact that everyone was entitled, de facto, to the equal opportunity to enjoy his rights with dignity. However, in nearly all developing countries, there was a de facto social structure - such as certain forms of land ownership - which led to a very uneven distribution of income and prevented the State from discharging its minimum core obligation, namely to ensure the minimum essential level of human rights. Under the circumstances, for the progressive realization of human rights, the entire scheme of social structuralization must be shown in countries' reports. In addition, the steps taken by the Government must be effective in the country's social context. States must fulfil their minimum core obligation by all internal means available and, if necessary, through international co-operation. That international co-operation must be used primarily for meeting the minimum core obligation, i.e. for the protection of human dignity. Therefore, from the point of view of article 2, the developing countries should set up mechanisms to determine the needs of grass-roots communities and make the best possible use of international assistance. The developing countries should inform the Committee of the mechanisms they had instituted, the effectiveness of their use of international co-operation and its results in protecting human dignity. It would also be useful to adopt provisions or set up an appropriate mechanism at the international level to ensure the optimum use of that co-operation. When considering country reports, the Committee must first of all make sure that States fulfilled their minimum core obligation and consider what steps might be taken as part of international co-operation. It should also supervise and harmonize the international co-operation activities of United Nations bodies, specialized agencies and bilateral organizations, from the perspective of protection of human rights.

43. Mr. ALVAREZ VITA fully agreed with Mr. Marchan Romero that one of the requirements that must definitely be met by any form of economic system serving as a vehicle for the measures referred to in article 2 was to be based on democratic principles. He therefore endorsed Mr. Marchan Romero's proposal to make an addition to that effect in paragraph 8 of the draft general comment.

44. Mr. Marchan Romero had also referred to the idea of adopting, at the appropriate time, an optional protocol to the International Covenant on Economic, Social and Cultural Rights. In his own view, such an instrument would resolve one of the problems often encountered in implementing the Covenant, namely that its provisions could not be invoked before national courts. The Committee might begin to pave the way for a protocol by adding, also in paragraph 8 of the draft, after the expression "by all appropriate means" the words "including particularly the adoption of legislative measures", which also appeared in article 2 of the Covenant.

45. All concepts evolved over time. To take an example from the field of environmental protection, the Committee now based itself more on the Stockholm Declaration than on the conception of the environment as it appeared in article 12, paragraph 2, of the Covenant, which dated from 1966. Once again,

it was important to look to the future and to expand the conception of rights so as to be able to solve the difficulties encountered. Thus it was necessary to go beyond the rather narrow framework seemingly traced by paragraph 8 of the draft and begin to speak of "new" rights: the right to development, raised by Mr. Mratchkov, to which might be added the right to enjoy an ecologically sound and balanced environment and the right to peace. Efforts might also aim at providing the idea of the common heritage of mankind with broader substance than was currently given to it under international law, by expanding it to include the resources of the universe as well as the works of the human intellect. In the even longer term, those ideas might provide a basis for establishing a new series of rights based on solidarity: the problems of one country would be settled in a spirit of solidarity among the inhabitants of the same planet.

46. To return to more immediate concerns, the Committee should take up and pursue two excellent studies that had been submitted to it on the right to self-determination and develop the content of that right, beginning with the idea that it must be exercised on an ongoing basis.

47. Mr. KONATE said that analysing the nature of States parties' obligations required the Committee to bring out the entire philosophy underlying the Covenant. That effort should be of a strictly preliminary nature, for the comments on article 2 of the Covenant might influence all the Committee's later work. The draft general comment dealt only with article 2, paragraphs 1 and 2. He wondered whether paragraph 3 would be analysed later or whether the Committee considered it sufficiently clear not to need any further explanation.

48. Concerning article 2, in which States parties undertook to take steps by all appropriate means with a view to achieving the full realization of the rights recognized in the Covenant, two questions had been raised, that of States' responsibility and that of the nature of the means. He did not believe the Committee could say, as paragraph 4 of the draft general comment seemed to do, that it was for the State to prove that it had used all appropriate means. Article 2 did not say that, and the Committee would be going too far in interpreting its task if it asked States to justify the means used. The Committee itself must assess those means in relation to the circumstances. As for the meaning which paragraph 4 sought to attribute to the expression "by all appropriate means", it should be noted that the Committee had not yet specified what it understood by the adjective "appropriate". Although Mr. Marchan Romero's comments were useful, in his own view the means should be analysed in relation to both article 2, article 4 and article 5. The draft should emphasize that those means were delimited by the objectives set forth in the Covenant, especially in articles 4 and 5. The Rapporteur had attempted to mention those limits at the end of the first sentence of paragraph 8 by saying that "provided only that ... all human rights are thereby respected". The draft general comment should be much more precise in that respect.

49. Emphasis should be placed on the idea of progressiveness in the exercise of those rights. Paragraph 1 of the draft did refer to it, but the Committee had not defined the criteria which would enable it to assess such progressiveness. Article 2, paragraph 1, mentioned in particular the adoption of legislative measures. The Committee must be able to assess the effectiveness of such legislative measures. For example, paragraph 10 of the

general comment said that "a minimum core obligation [is] to ensure the satisfaction of, at the very least, minimum essential levels of each of the rights", but in his view it was difficult to determine what exactly that phrase meant.

50. The draft should place greater emphasis on international co-operation. It should remind States that the measures taken at the national level might be insufficient and that they might also draw on international co-operation to ensure the exercise of the rights provided for in the Covenant.

51. Mr. MUTERAHEJURU said that he would make only two comments on the draft, which he found satisfactory and about which most of the essential points had already been made. By saying, in the second sentence of paragraph 10, that "a State party in which any significant number of individuals is deprived of essential foodstuffs [...] is, prima facie, failing to discharge its obligations under the Covenant", the Committee was making a presumption of guilt concerning States which might have other objective reasons for not satisfying the basic needs of their population. What that sentence sought to convey was that it was essential for States to fulfil their obligations, but the wording used was too rigid and should be made more flexible.

52. Paragraph 14 did not explain what the Committee meant by "international assistance and co-operation". In his view that did not mean that States must give or receive assistance but that they had an obligation to act or refrain from acting, for example, to guarantee a certain physical environment on the planet, or a certain moral environment, such as would result from the establishment of security zones. Emphasis should be placed on the sense of responsibility that should underlie such co-operation.

53. Mr. FOFANA drew attention to article 2, paragraph 3, of the Covenant, which gave developing countries the possibility of determining to what extent they would guarantee the economic rights recognized in the Covenant to non-nationals. The draft general comment dealt with the main questions raised in article 2, paragraphs 1 and 2, but said nothing about paragraph 3, although consideration of the latter paragraph would allow the Committee to make headway in studying the other two.

54. Mr. GLAIEL said that the adoption of the draft general comment would give the Committee enhanced means of ensuring the implementation of the Covenant and would provide reporting States with additional guidelines. The discussion had shown that the members of the Committee all agreed with the ideas proposed and with the construction given to the provisions of article 2. Since Mr. Konate had already formulated most of the comments he himself had wished to make, he would simply note, on the one hand, that when considering the situation in a given country with regard to the implementation of the rights set forth in the Covenant, the Committee must always consider the progress made in relation to the previous situation, and on the other, that it must always take into account the specific situation of each State party. Thus, for example, religious reasons might prevent certain States from adopting the Convention on the Elimination of All Forms of Discrimination against Women, which would require extensive changes in their legislation. Similarly, economic difficulties might make it difficult for certain States fully to meet their obligations under the Covenant. The draft general comment should place greater emphasis on the possibilities that international assistance and co-operation offered those States, in the framework of the United Nations and

under current circumstances. The Committee should consider further developing that part of the draft in the interests of all States, especially the poorest. He hoped the document, which contained some very important ideas, would be studied very seriously and adopted forthwith.

55. Mr. ALSTON said he would take into account all the comments already made or any that might be made at the following meeting and that his revised draft would deal separately with discrimination, article 2 (2), article 2 (3) and article 3. The draft, which would be completed very soon, would not be unalterable but dynamic, as a number of speakers had wished.

The meeting rose at 6.05 p.m.